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## **Title: The Paris Agreement – Protecting the Human Right to Health?**

Running head: The Paris Agreement and the Human Right to Health

*The Paris Agreement was largely viewed as a resounding success by those who took part in its negotiation. This paper examines whether these claims hold up to closer scrutiny. More specifically, the paper will assess whether the Paris Agreement protects the human right to health. Considering that the widely celebrated 1.5°C target aims to protect present and future generations from the effects of climate change, which include substantial threats to human health, this is an especially pertinent area of study for climate justice theorists. Despite the threats climate change poses to human health, the subject of health has been somewhat neglected among climate justice scholars and policy makers alike. This paper illustrates that a focus on health can reveal much about the inadequacies of the Paris Agreement and multilateral climate change governance more widely. Unfolding in two parts, the paper first focuses on human health, explaining how this is threatened by climate change and why a human rights based climate justice approach can highlight the importance of these threats and define what is morally required of policy makers. Part two of the paper turns to the assessment of the Paris Agreement, focusing on whether the policy makers who negotiated the Agreement have met these requirements. By briefly examining what has been promised in the Convention and what has been achieved under the Kyoto Protocol to date, the paper is able to assess whether the Paris Agreement represents a significant departure from the so far inadequate response to the climate change problem. It will be illustrated that although there has been a small step forward, the Paris Agreement cannot be said to represent a just response which protects the right to health of present and future generations.*

### **Policy Implications**

1. The Paris Agreement presents no more than a small step forward, and does not represent policy which protects the right to health of present and future generations. Protecting the right to health needs to be prioritized and taken more seriously as part of multilateral climate change policy.
2. The loose compliance measures set out in the Paris Agreement weaken the force of the Agreement, calling into question whether states will comply once the Agreement is implemented. This may undermine efforts to limit emissions and thereby protect the human right to health. Compliance measures should be revisited in the negotiations leading up the Paris Agreement's implementation.
3. The existing, and arguably outdated, categorization of Annex I and Annex II countries has not been revised as expected, making it unclear which states are responsible for climate change mitigation and contribution to climate change costs. This may undermine mitigation targets and threaten the human right to health. The negotiations leading up the implementation of the Paris Agreement should address the failure to clearly determine responsibilities.
4. Individually Determined National Contributions (INDCs) are currently inadequate for meeting the newly agreed 1.5°C emissions target, and put the human right to health at substantial risk. These targets should be revised as a matter of urgency.

## **The Paris Agreement – Protecting the Right to Health?**

The Paris Agreement was largely viewed as a resounding success by those who took part in its negotiation (McGrath, 2015). Representatives of the UNFCCC (2015b) celebrated the Paris Agreement as a momentous step forward, and United Nations Secretary General Ban Ki-Moon (2015) claimed that the acceptance of the Agreement presents ‘a significant day for historians of the future to look back on.’ This paper examines whether these claims hold up to closer scrutiny. More specifically, the paper assesses whether the Paris Agreement protects the human right to health. Considering that the widely celebrated 1.5°C target aims to protect present and future generations from the effects of climate change, which include substantial threats to human health, this is an especially pertinent area of study for climate justice theorists. Despite the threats climate change poses to human health, health has been somewhat neglected among climate justice scholars and policy makers alike. This paper aims to illustrate the importance of human health in the case of climate change by taking a human rights based approach that prioritizes the right to health. This focus on the human right to health allows the paper to point to the inadequacies of the Paris Agreement and multilateral climate change governance action on climate change more widely.

The paper will unfold in two parts. The first part focuses on human health, explaining how this is threatened by climate change and why a human rights based climate justice approach can highlight the importance of these threats and define what is morally required of policy makers. Part two of the paper turns to the assessment of the Paris Agreement, focusing on whether the policy makers who negotiated the Agreement have met these requirements. By briefly examining what was promised in the Convention and what has been achieved under the Kyoto Protocol to date, the paper is able to assess whether the Paris Agreement represents a significant departure from current climate change policy. The paper argues that although there has been a small step forward, the Paris Agreement cannot be said to represent a just response which protects the human right to health even in the most minimal sense. The paper will conclude that protecting the right to health needs to be prioritized and taken more seriously as part of the multilateral climate change response. Policy makers and climate change scholars alike should therefore view the celebration around the Agreement with a strong degree of scepticism.

### ***Human Health and Climate Change***

Climate change and human health are inexorably linked by the threats the former poses to the latter. It is well known that climate change is predicted to cause warming of the atmosphere and oceans, melting of icecaps and glaciers, rising sea levels, increased rainfall, and widespread droughts (IPCC 2014). What is often less discussed are the potentially deleterious consequences climate change will have on human health. The risks to health multi-faceted, encompassing both direct and indirect threats. Heat stress and air pollution, for example, both pose a direct threat to human health because they can cause cardio-respiratory problems (Caney 2010, p. 167). Flooding, landslides, and extreme precipitation pose another direct threat because they can affect clean water supplies and thereby spread diseases, including diarrheal diseases (IPCC, 2014, p. 11). There will also be an increase in intensely allergenic plants, which can pose a dangerous, direct threat to those with existing and underlying allergies (Hansen et al., 2013, p. 8).

Threats to health are also indirect. For example, droughts, inland and coastal flooding, extreme precipitation, and sea-level rises all threaten crop growth and water supply (Hansen et al., 2013, p. 8). Stress on these resources threatens health because it can lead to starvation, but also because lack of food and water inhibits the ability to provide nutritionally balanced diets to mitigate and repair liquid and nutrient losses when diseases develop, potentially increasing their morbidity rates (Jamison et al., 2006, p. 373). Other indirect threats to health include increased instances in existing diseases such as malaria, because warmer weather can lead to more mosquitos, as well as a rise in infectious diseases including HIV and AIDS, as people move from their places of origin to avoid the consequences of climate change (Caney, 2010, p. 167). Forced migration may also lead to people living in crowded and unsanitary conditions. This threatens health because communicable diseases are exacerbated by poor housing, crowding, dirt floors, lack of access to sufficient clean water or to sanitary disposal of fecal waste, and a lack of refrigerated storage for food (Jamison et al., 2006, p. 373). As can be seen above, climate change poses substantial risks to human health in a variety of ways. These risks are very well-evidenced among scientific experts, creating a strong case for the protection against the threat to human health.

Interestingly, human health has been somewhat neglected by global justice and climate change scholars. Spurred on by the global nature of the problem and the injustices it presents, scholars such as Henry Shue, Simon Caney, Steven Vanderheiden and Paul Harris, have developed climate justice as a discipline, especially within the last decade. Although some scholars, including Tim Hayward and Simon Caney, draw attention to human health, the focus on health remains somewhat underdeveloped in climate justice approaches. As an example, Hayward's (2007) focus on health only forms a part of his broader 'human right to ecological space,' defined as the human right to live in an environment free of harmful pollution. He explains that this should ensure the right of each individual to an environment adequate for their health and wellbeing (Hayward, 2007, p. 432). Similarly, Caney (2010) focuses on health only as part of his wider human rights approach, which prioritizes three separate rights: the human right to health, sustenance, and life. Motivated by the substantial threat to health posed by climate change, and the neglect of the subject in the discipline of climate justice, this paper focuses exclusively on health. In doing so, the paper hopes to draw attention to the importance of human health in the case of climate change, not only for climate justice scholars, but climate change researchers more widely.

In order to prioritize human health and discuss how this can be protected, the paper will take a human rights based approach. This is not uncommon within climate justice literature, as can be seen from Hayward and Caney's approaches above. The rationale behind taking a human rights approach can be explained by drawing attention to three important strengths of human rights approaches. First, employing human rights helps scholars to articulate, develop, and defend a fundamental ethical intuition: that there are some kinds of harms that should not be inflicted on others (Gardiner, 2013, p. 214). In other words, focusing on human rights helps to identify which harms humans should be protected from. This paper, for example, seeks to highlight the potential harm climate change poses to human health. The paper can defend the importance of the protection of this harm by defining a right to health which serves to protect individuals from this threat. Second, human rights approaches draw attention to individuals, emphasizing the perspective of victims and focusing on the protection of the most vulnerable (Gardiner, 2013, p. 214). This is especially useful in the case of climate change, which will affect individuals across the globe, but especially those living in less developed countries,

who will be hardest hit by climate change effects. By taking a human rights based approach, the paper is able to draw attention to vulnerable individuals, both present and future, whose health is threatened by climate change, and who must be protected from this threat. Third and finally, human rights commonly represent moral thresholds below which people should not fall (Caney 2010, p. 164). By employing a human rights approach, this paper can define the right to health as a moral minimum which must be protected.

In sum, making use of a human rights approach to climate justice allows the paper to draw attention to the potential harm to human health, identify vulnerable individuals, and set a minimal moral threshold which cannot be crossed. This, in turn, allows the paper to critically assess the Paris Agreement, because it explains why protecting the right to health is important, identifies who is at risk, and clearly sets out what is minimally required to protect these individuals. If this is achieved, then the paper can set out specific requirements policy makers must fulfill in order to protect vulnerable individuals from health related harms.<sup>1</sup> The paper is then able to assess whether these requirements have been met in the negotiation of the Paris Agreement. Having already identified the potential harm to human health above, the paper now turns to defining a minimal moral threshold and identifying potential victims. This will enable the paper to specify requirements for policy makers.

In order to set out a minimum moral threshold, the paper must define what is meant by a right to health. The human right to health is often defined very broadly. The International Covenant on Economic Social and Cultural Rights, for example, defines the right to health as the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' This broad conception makes it nearly impossible to define a minimal moral threshold. The highest attainable standard of health is necessarily context specific, and includes many possible elements such as mental health, family planning, vaccinations, nutrition and other factors, which means a definition is difficult to pin down. The complexity of such a broad approach would make it very difficult to set out requirements for policy makers, especially in the short space of this paper. Using a far more minimal definition of the right to health allows for a modest, yet clear moral minimum in the case of climate change. Such a definition is readily provided by Simon Caney (2010, p. 166), who purposefully sets out a 'very modest and non-contentious' definition to make his account as compelling as possible. In line with these aims, he puts forward that 'all persons have a human right that other people do not act so as to create serious threats to their health' (Caney 2010, p. 166).

In the case of climate change, protecting this right would, at the very least, require the mitigation of emissions to avoid serious threats human health. The latest IPCC report explains that in order to avoid dangerous climate change, global temperature change must be kept at or below 2°C compared to pre-industrial levels (IPCC, 2014, p. 14). Importantly, there is a relationship between the threat to the human health and the 2°C threshold. A 2°C rise is projected to cause 'dangerous' climate change, which includes a major ice melting, wildfires, ocean acidification, and heat waves (Hansen et al., 2013, p. 3). These effects of climate change will result in loss of life, forced migration, place stress on water and food resources, and result in spreading of diseases, all of which threaten human health (Hansen et al., 2013, p. 3). For this reason, world health experts have concluded with 'very high confidence' that climate change will contribute to the global burden of disease and premature death, and that a rise of 2°C will have deleterious consequences for human health (Hansen et al., 2013, p. 8). This seems to suggest that not creating serious threats to human health, will require, at the very least, that global

temperatures are kept below at or below 2°C relative to pre-industrial levels. Keeping global temperatures below 2°C will require substantial emissions reductions. The IPCC claims, at the time of writing, that emissions would have to be cut by 40% - 70% by 2050 compared to 2010, and would need to be near zero or below in 2100 (IPCC, 2014, p. 8). In light of this advice, it seems that cutting emissions by this amount is what is *minimally* required of policy makers to not create serious threats to human health, thereby protecting the human right to health, as defined by Caney.

Of course, fully protecting human health will require more than simply mitigating emissions. Climate change may produce ill effects well before the 2°C limit is reached (Jamieson et al. 2006), and scientists are confident that mitigation will not eliminate all climate change impacts (IPCC, 2007, p. 73). Adaptation may be necessary to cope with these impacts. The paper does not deny the importance of adaption, or claim that mitigation will be enough to fully protect human health. Instead, the paper aims to investigate whether policy makers comply with a very modest moral threshold. If this is not the case, then this will present a strong indication that the current climate change response is unjust, failing to meet even the most minimal demands of justice – not creating serious threats to human health.

The paper has now defined the minimal moral threshold, which requires keeping temperatures below 2°C. Identifying vulnerable individuals therefore means looking to those who will be alive when the temperature rises by this amount. Importantly, the 2°C rise is not expected to occur until 2050 – 2100 (IPCC, 2014, p. 14). Therefore, when discussing the human right to health, it is implicit that those whose right to health will be threatened will in part be those who exist in the future. This implies that assessing action on climate change requires examining to what extent vulnerable individuals, both present and future, are protected. Although the rights of future generations are by no means uncontested,<sup>2</sup> climate justice scholars commonly argue that time of birth is a matter of luck, similarly to place of birth, rendering time morally arbitrary (for example Caney 2009, Vanderheiden 2008). An individual cannot choose when they are born, so this should not affect what they deserve. This claim is based in the cosmopolitan assumption of the equal moral worth of individuals. Cosmopolitans take the individual as their moral starting point because they assume that all human beings have equal moral worth, and therefore have the right to equal moral consideration (Pogge 2010, p. 114). To attach this equal moral consideration to future generations is therefore logically consistent with cosmopolitanism. This paper takes a cosmopolitan justice approach, and consequently considers the human right to health of future generations to be as valuable as the human rights of present generations. The paper therefore considers it morally important to assess whether the Paris Agreement protects the right to health of present and future generations, and now turns to this assessment.

### ***Assessing the Paris Agreement***

The Paris Agreement was accepted by the Conference of the Parties to the United Nations Framework for the Convention on Climate Change (UNFCCC) on December 12<sup>th</sup> 2015. The threshold of 55 Parties and 55% of emissions required for ratification of the Agreement was reached on October 4<sup>th</sup> 2016, allowing it to come into force on November 4<sup>th</sup> 2016. Although the legal standing of the Paris Agreement is contested,<sup>3</sup> it is widely assumed that it will succeed the Kyoto Protocol, whose current commitment period ceases in 2020. As such, the Paris Agreement provides an insight into the current state of climate change negotiations as well as the future of multilateral climate change governance.

The Paris Agreement has been hailed as a significant step forward by those who took part in its negotiation. The paper will now investigate whether these claims hold up to closer scrutiny, by assessing whether the Paris Agreement protects the human right to health of present and future generations. To aid this assessment, the paper will first explain what action has been taken under the UNFCCC so far by briefly discussing the original Convention and the Kyoto Protocol. The Convention is an international treaty that aims to guide multilateral action on climate change and the Kyoto Protocol is the current 'plan for action' of the states who are signatories to the UNFCCC, initially covering the period 2005 – 2012 and currently in force until 2020. In this sense, the Convention represents the aims of the actors within the UNFCCC, and the Kyoto Protocol encompasses the scope of climate change action taken by these actors to date. Understanding what has been achieved so far allows the paper to explore whether the Paris Agreement does indeed represent a step forward, especially in terms of protecting the human right to health.

The Paris Agreement was developed, negotiated, and written by states who are signatories to the UNFCCC. States who operate within the UNFCCC are explicitly tasked with creating global treaties and agreements in order to 'to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system' (UNFCCC, 1992, p. 9). In other words, the UNFCCC has been set up to provide a space where states can come together to negotiate climate change policy, including how to mitigate emissions. States are the decision makers in climate negotiations, and so are the primary agents within the UNFCCC, rather than the UNFCCC presenting agency in itself. The UNFCCC is the only global multilateral institution tasked, by treaty, with coordinating global climate change action, reviewing progress on commitments and updating these in the light of the latest scientific advice (Bulkeley and Newell, 2010, p. 18). For this reason, states who are signatories to the UNFCCC have the capability to make decisions which can protect the right to health of present and future generations. This capacity to protect the human right to health makes the assessment of the Paris Agreement normatively appropriate and important. The capacity exists, but the question remains to what extent this is acted upon.

In order to answer this question, the paper will focus on whether there are policies in place that could restructure the context so that the right to health can be protected. 'Restructuring' the context is a broadly defined, and can include enforcing compliance through policy measures, incentivizing actors by offering rewards for their action, creating norms which encourage compliance by making non-compliance seem unacceptable, undermining resistance to compliance, and using civil disobedience to encourage governments to act (as suggested by Caney, 2014 pp. 136-138). These types of policies have the potential to ensure that the institutional context is structured to keep emission in check and thereby protect the human right to health. Of course, there are some issues with examining existing policies, because climate change policies can often contain ambiguities, which could be interpreted as creating a context which is conducive to protecting the right to health, but do not imply that a condition of justice is guaranteed. During negotiations, the Parties of the UNFCCC often seek flexible language to accommodate the diverging positions of parties (Stevenson and Dryzek, 2014, p. 70). Common ambiguities include the frequent use of 'shall' instead of more peremptory words like 'will' or 'must' (Stevenson and Dryzek, 2014, p. 70). This can be problematic, because these ambiguities imply that policies can be interpreted in different ways, which calls into question what the actors under the UNFCCC have committed to, and what these commitments will mean in practice. Although

it may appear that the commitments or ambitions of the actors in the UNFCCC are attempting to protect the right to health, this does not guarantee the protection of said right. Nevertheless, it is important to evaluate what room, or scope, there is for protecting the right to human health in first place, which is what the paper sets out to do.

### *The Convention and Kyoto Protocol – The Current State of Affairs*

Protecting the human right to health requires that *at minimum* global temperatures are kept below a 2°C rise compared to pre-industrial levels. Unfortunately, current climate change policy does not support this very modest goal. Although the original Convention promised to ‘protect the climate system for the benefit of present and future generations of humankind’ (UNFCCC, 1992, p. 9), this promise has so far not been upheld. The Kyoto Protocol, which should ideally make good on the ambitions set out in the Convention, is not in line with what is required of policy makers to protect the human right to health.

Although the policy makers at the UNFCCC affirmed the 2°C goal in 2009 as part of the Copenhagen Accord, the Kyoto Protocol only aims to lower emissions by ‘at least 18% below 1990 levels in the commitment period 2013 to 2020’ (UNFCCC, 2012, p. 4). As was explained above, the current IPCC report calls for emissions to be lowered by 40 – 70% of 2010 levels by 2050 in order to keep warming below 2°C. Lowering emissions to 18% of 1990 levels by 2020 is not in line with this requirement - 55% of 2010 emissions is equivalent to 40% of 1990 emissions, well above the 18% target of the Kyoto Protocol (UNEP, 2014). This weak target is highly problematic in terms of protecting the human right to health. Policy makers are not setting out a context within which the right to health can be protected, because the expectations of signatory states are significantly below what is morally required of them. This does not create strong incentives to meet minimal moral requirements.

To make matters worse, the Kyoto Protocol only sets targets for a handful of industrialized countries, excluding some of the currently highest emitters (Climate Action Network Europe, 2015, p. 12). This significantly dampens the potential of emissions reductions under the Kyoto Protocol. The United States, which is, at the time of writing, the second highest emitting country in the world, never ratified the Kyoto Protocol. In addition, the Kyoto Protocol divides countries into four categories: Annex I, Annex II, non-Annex I, and Least Developed Countries. Annex I countries are ‘industrialized’ and held to account for emissions reductions, and Annex II countries, which represent the Organization for Economic Co-operation and Development members of Annex I, are held to account for financial contributions (UNFCCC, 2016). Non-Annex I countries, a category which encompasses 148 countries including Brazil, China, India and South Africa, are considered ‘mostly developing countries.’ Out of the 148 Non-Annex I countries, there are 49 ‘Least Developed Countries’ which are considered especially vulnerable to climate change (UNFCCC, 2016). Non-Annex I countries are not held to account for emissions reductions or financial contributions under the Kyoto Protocol (UNFCCC, 2016). This is highly problematic, because some of these countries have a very high emissions levels, but are, under the Kyoto Protocol, not required to lower their emissions in the current commitment period. China, for example, is now the world’s largest emitter in absolute terms, ranking on par with the European Union in per capita terms (Earth Negotiations Bulletin, 2015, p. 30). This creates a context where it is difficult to protect the right to health, because the highest emitting countries are not held to account for lowering emissions, seriously undermining global mitigation efforts.



Furthermore, although the Kyoto Protocol sets specific targets, the Protocol does not set up compliance mechanisms for failure to meet these targets. Instead, any emissions reductions which are not met can be, 'on request... be added to the assigned amount for subsequent commitment periods' (UNFCCC, 1998 p. 5). This is indicative of a very loose and voluntary compliance system, where states are not obligated to meet targets in the current commitment period, and if they do not, it is up to them to make up for this in later commitment periods. In addition, countries can opt out at any time. Canada, Japan, Russia (each ranking among the top ten highest emitting countries), and New Zealand have refused to participate in the second commitment period of the Kyoto Protocol, and have not faced any consequences for this. If there is no punishment in place for not meeting targets or abandoning the Protocol, this creates a context with few incentives for meeting emissions targets. In this current context, only a handful of countries are set to meet the targets set out in the Kyoto Protocol (Stevenson and Dryzek, 2014, p. 2).

All of the above suggests that the Kyoto Protocol does not create a context within which the right to health can be successfully protected. If aims are too low, many high emitting countries are not held to account, and punishment for non-compliance is weak, then there is little incentive to keep emissions in check. This is not a context which is conducive to making the emissions cuts required to protect the human right to health. In fact, under the Kyoto Protocol, emissions levels have continued to rise in the past decades, rendering the 2°C target increasingly unattainable. 2015 marked a 1°C temperature rise, making it the hottest year on record so far. Under current policies set out in the Kyoto Protocol, global temperatures are set warm by between 2.7°C and 4.9°C, reaching 3.6°C by 2100 (Climate Action Tracker, 2016b). For this reason, it is possible to make the case that actors under the UNFCCC are currently not meeting even the most *minimal* requirement of protecting the human right to health, because they are not creating a context where this is possible. This leads the paper to the assessment of the Paris Agreement, to investigate whether it can be said to represent a significant step forward from the so far inadequate climate change response.

#### *The Future of Climate Change Governance – the Paris Agreement*

The paper has so far discussed three main problems current multilateral action faces: inadequate targets, lack of participation, and weak compliance measures. These problems are placing the human right to health in jeopardy, as temperatures continue to rise ever closer towards 2°C. Considering that a 2°C rise will significantly worsen the global burden of disease and increase the likelihood premature death from health-related problems, it can be said that policy makers are so far not acting in a just manner, as they are neglecting to meet even the most basic requirement for protecting the human right to health. The assessment which follows will discuss to what extent the Paris Agreement is able to move forward on the existing problems listed above. First, it must be noted that the Paris Agreement explicitly mentions the right to health as a reason to act on climate change in its preamble (UNFCCC, 2015a, p. 21, emphasis added):

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, **the right to health**, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

This is an interesting development, considering that neither the Convention nor the Kyoto Protocol make mention of the human right to health. Although the Convention addresses health Article 4.1f, which states that the Parties to the Convention will ‘employ appropriate methods... with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment’ (UNFCCC, 1992, p. 11), the *right* to health was not included in the Convention or Kyoto Protocol. This is indicative of neglect, or at the very least lack of prioritization, the right to health faced among policy makers before the Paris Agreement. It is therefore important to evaluate whether the mention of the right to health in the Paris Agreement implies a step forward for the protection of this right. The mention of the right to health is promising in terms of creating a context where the human right to health can be protected, because if the actors in the UNFCCC explicitly aim to protect this right it opens up the space to create policy that can do so. However, under international law, the preamble of a treaty is not considered legally binding. For this reason, it is important to investigate how exactly the actors within the UNFCCC protect the right to health under the Paris Agreement. The question is whether these actors are meeting the basic requirement of creating a context where the 2°C rise in temperatures can be avoided. At first glance, it would certainly seem so.

The Paris Agreement has been widely commended for setting global emissions targets that are stricter than any previous targets set by states operating under the UNFCCC. A limit of 2°C was set in the 2009 Copenhagen Accord, and applies to the current commitment period (2013 – 2020) of the Kyoto Protocol. The Paris Agreement has, for the first time in multilateral climate change governance history, set a target which is below 2°C. Article 2 of the Agreement sets a target which will limit ‘the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels’ (UNFCCC, 2015a, p. 22). This new target has been celebrated by commentators and participants in the negotiations. Their celebration is not entirely unfounded, because the new target is quite clearly a positive step forward in terms of not causing serious threats to human health, which requires that temperatures are held to below 2°C. Setting a stricter target may create a context where states are pushed to raise their ambitions, increasing the chance of preventing serious threats to human health.

Although this ambitious aim is a positive development in terms of creating a context where the human right to health can be protected, the Paris Agreement does not set legally binding emissions reductions targets. Instead, states have submitted their own emission reduction plans, which are currently not in line with what is required to meet a global 1.5°C target. Under the individual commitments made in Paris, temperatures will be kept between 2.2°C and 3.4°C, with a median warming of 2.7°C by 2100. This has been calculated by the Climate Action Tracker team who examined the Intended Nationally Determined Contributions (INDCs) of thirty-two Parties, encompassing 81% of global emissions (Climate Action Tracker, 2016a). Of these thirty-two INDCs, the Climate Action Tracker has rated five as ‘sufficient’ enough to hold global temperatures below 2°C. These ‘sufficient’ pledges only represent 0.4% of global emissions. All other submissions fall below this threshold. Current emissions reductions pledges are therefore not consistent with what has been agreed in Paris, and furthermore are not in line with what is minimally required of policy makers to protect the human right to health. Setting ambitious global goals is very important in terms of creating a context where emissions can be kept in line with what is required to not cause serious threats to human health, but this has clearly not yet resulted in states complying with such a limit. The current President of the UNFCCC, Marcin Korolec,

raised this concern in his proposal preceding the Agreement, explaining that ‘the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the INDCs do not fall within least cost 2°C scenarios... much greater emission reduction efforts will be required’ (UNFCCC, 2015, p. 4). It is clear that the president expects more, but it is as of yet unclear whether policy makers will respond to this call for stricter emissions limits.

Furthermore, it is difficult to discern which states will be held to account and to what extent under the Paris Agreement. One hundred and sixty countries have so far submitted INDCs, including the US, China, Brazil, Canada, and New Zealand, who are not currently held to account by the Kyoto Protocol. This is promising in terms of widening participation. Nevertheless, the Paris Agreement has not resulted in a change to categories of countries who must act on climate change. There was some hope that the existing categories of Annex I and II would be changed to include more countries in the list of those responsible for lowering emissions (Earth Negotiations Bulletin, 2015, pp. 4-14). The Paris Agreement does not make mention of changing the existing categories. Article 4.4 states that ‘developed country Parties should continue taking the lead by undertaking economy wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy wide emission reduction or limitation targets in the light of different national circumstances’ (UNFCCC, 2015a, p. 22). In this sense, developing countries are still not held to account for immediate action, but rather encouraged to act over an unspecified time period. Considering the small number of states which are labelled ‘developed’ (Annex I and II) and the fact that many high emitting countries, including the BRICS nations are labelled ‘developing’ (Non-Annex I) it is possible to say that the context for protecting the right to health is not being meaningfully fostered. If Annex I and II remain unchanged, this implies that Non-Annex I countries with high emissions, including India and China, are not encouraged to act with the urgency that is required to protect the human right to health. In this sense, the current context created by policy makers does not yet support what is minimally required to prevent serious threats to human health.

It remains to be seen how much pressure is put on high emitting less developed countries such as China and Brazil once the Paris Agreement is in force, and what enforcement mechanisms will be put in place to ensure compliance. The Paris Agreement has several measures in place which could encourage compliance. For example, Article 4 calls for INDCs to be updated every five years, with each successive pledge required to be as stringent as or more ambitious than the existing one (UNFCCC, 2015a, p. 23). In addition to this, the Paris Agreement calls for a ‘global stocktake’ under Article 14, beginning in 2023 and scheduled to occur every five years thereafter. The results of this stocktake ‘shall inform Parties in updating and enhancing, in a nationally determined manner, their actions... as well as in enhancing international cooperation for climate action’ (UNFCCC, 2015a, p. 29). The global stocktake, combined with a review of INDCs every five years, has the potential to ensure compliance because the pressure of monitoring progress may discourage stalling of mitigation efforts. This creates a context where states are held to account for their emissions reduction efforts, because they must report on these for assessment. In this sense, the stocktake may contribute to creating a context where emissions are kept in line with what is minimally morally required for protecting the human right to health. This is especially true given that the Paris Agreement establishes a compliance mechanism in Article 15, which will consist of a committee of experts.

Although this seems promising, because it creates a context where states are expected to comply with their planned emissions reduction efforts, the committee will 'function in a manner that is transparent, non-adversarial and non-punitive' (UNFCCC, 2015a, p. 29). The term 'non-punitive' suggests that the compliance mechanism will have a soft touch, and that much like in the Kyoto Protocol, there are currently no established consequences for non-compliance. Indeed, participation in the Paris Agreement is entirely voluntary, and states can choose to withdraw at any time after the first three years of the implantation of the Agreement, as explained in Article 28 (UNFCCC, 2015a, p. 32). According to Article 6.1, the voluntary nature of participation allows 'for higher ambition in [states'] mitigation and adaptation actions' (UNFCCC, 2015a, p. 24). Although some may comment that these weak compliance measures are the best which could be hoped for given the political circumstances of the negotiations, weak compliance measures have been quite problematic under the Kyoto Protocol, as was discussed above. It may be politically difficult to come to an agreement on stronger compliance measures, but failing to enforce compliance will no doubt jeopardize the chances of limiting temperature rises to 2°C. If policy makers are aware that a failure to meet emissions reduction targets will not be punished in any meaningful sense, this may create a context where non-compliance is not taken seriously, and states make promises they cannot keep. If the promises to lower emissions are not kept, this will make it very difficult to keep emissions levels in check and to meet the basic moral requirement of not creating serious threats to human health.

In sum, the Paris Agreement has established an ambitious global target, has so far resulted in one hundred and sixty countries pledging to lower emissions, and has also put in place more coherent compliance mechanisms than the Kyoto Protocol. Nevertheless, current emissions targets do not live up to the ambitious temperature 1.5°C limit set, the categories of developed and less developed countries have not been updated, and compliance measures are still non-punitive, with member states able to leave the Agreement at any time. Under the current context created by policy makers, it is not clear whether enough countries will consistently contribute at a level which is necessary to keep temperatures to 2°C. The right to health, even minimally conceived, remains in serious jeopardy. Policy makers are not doing what is minimally required to protect the human right to health, and this is cause for very serious alarm for present and future generations. This alarm could of course extend to other human rights that are threatened by climate change, each creating their own instances of injustice. In this sense, climate change constitutes a series of injustices. This short paper merely aims to highlight one such injustice that has been neglected by climate change justice scholars and climate change policy makers alike.

### **Conclusion**

The continued existence of a multilateral framework charged with the execution of global climate change policy is in many ways an important achievement. Although the UNFCCC faces significant problems, it is nevertheless promising that the framework continues to exist and that actors within this framework are attempting to create a second binding treaty. The mention of the right to health and movement towards increased mitigation efforts set out in the Paris Agreement are commendable, and indicate a sustained effort to move climate change action forwards. Nevertheless, this paper has demonstrated that policy makers have not yet created a context where the right to health can be protected by keeping temperature changes below 2°C. Present and future generations remain at risk while negotiators congratulate another on the ratification of the Paris Agreement.

Protecting the right to health needs to be prioritized and taken more seriously as part of multilateral climate change policy. This is especially important now that the Paris Agreement has been ratified. In the negotiations running up to the implementation of the Agreement in 2020, policy makers must attempt to address the inadequacies of the Paris Agreement. Three concrete suggestions for these negotiations stem from the findings in this paper. First, policy makers must discuss whether the loose compliance measures outlined in the Paris Agreement could be strengthened to create a political context where emissions are likely to be kept in check. Second, in the run up to implementation, policy makers should aim to more clearly set out the responsibilities of developed and less developed countries. Third and finally, the INDCs, as they stand, put the human right to health at substantial risk, and should be revised by policy makers as a matter of urgency. Taking these steps towards protecting the human right to health will no doubt enable policy makers meet the aims they set out in 1992 - to 'protect the climate system for the benefit of present and future generations of humankind' (UNFCCC, 1992, p. 9). For now, policy makers and climate change scholars alike should view the celebration around the Agreement with great scepticism.

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<sup>1</sup> There are other possible approaches to climate justice. For example, wellbeing and human flourishing approaches often have similar aims to human rights approaches, in the sense that these approaches focus on individuals and attempt to establish boundaries and minimum expectations of what these individuals deserve. A human rights based approach is not contradictory to these aims, and may in fact be helpful in defining what wellbeing or flourishing entails in the case of climate change. As Stephen Gardiner (2013, p. 215) notes, 'human rights can serve as a foundation on which other things are built.' In this sense, a human rights approach can presuppose, or at least support, other approaches to climate justice.

<sup>2</sup> The question of balance between future and present generations' rights is contested, particularly in terms of how much current generations must sacrifice, or how much future generations deserve. These questions are relevant to discussions concerning the right of present generations to develop, among others. However, it is not specifically within the scope of this short paper to address these concerns in detail. This is not to deny the importance of such concerns, especially for future research.

<sup>3</sup> Under international law, Protocols to an original treaty are considered legally binding. However, the United States Constitution stipulates that all treaties must be approved by a two thirds majority in Congress. This caused problems for the Clinton Administration, which was unable to attain governmental approval to ratify the Kyoto Protocol. For this reason, the current administration under President Barack Obama has repeatedly stressed that the Paris Agreement should not be considered a treaty, unlike the Kyoto Protocol. It therefore remains to be seen what legal force the Paris Agreement has. For a good discussion of these matters, see (Bodansky, 2016) and (Demerjian and Mufson, 2015).

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